IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Misc. application No. 432 of 2005

AND

Misc. Application No. 825 of 2005

Date of decision:- 25/4/2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date:- 25-04-06 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 432 of 2005

1. Km. Manisha Kashyap
   D/o Late Som Dutt Kashyap

2. Km. Deepika Kashyap
   D/o Late Som Dutt Kashyap
   Previously both R/o Geeta Nagar
   Gali Nagar 4, IDPL Rishikesh,
   Police Station Rishikesh,
   District – Haridwar
   Presently both R/o House No.45 Chandeshwar
   Nagar Chandra Bhaga
   Police Station Rishikesh,
   District-Dehradun .....Applicants

Versus

1. State of Uttaranchal
2. Rajendra Singh Kashyap
   S/o Shri Bula Ram
   R/o Village Mohakkumpur Mazri
   Police Station-Doiwala
   District- Dehradun ...Respondents

And

Criminal Misc. Application No. 825 of 2005

Smt. Poonam ...Applicant

Versus

State of Uttaranchal and another ...Respondents

Sri Vivek Shukla, learned counsel for the applicants.
Sri Nandan Arya, learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

This petition u/s 482 Cr.P.C. has been directed to quash and set aside the chargesheet and summoning order dated 07.05.2005 and entire proceedings in Case Crime No. 104 of 2004, Criminal Case No. 784 of 2005 u/s 366 and 376 I.P.C.

Brief facts for the disposal of these petition are that the respondent No. 2 lodged an F.I.R. against the present applicants and four other persons on 30.04.2004 for an incident alleged to have

taken place on 21.04.2004 at Police Station Dalanwala, District Dehradun. It is alleged in the F.I.R. that the co-accused Naveen Kashyap had abducted and enticed away his daughter aged about 17 years. It was also alleged in the said F.I.R. by the complainant that the present applicants also assisted Naveen Kashyap in enticing away his daughter. It was further alleged therein that despite his best effort, he could not trace his daughter. When the father of the complainant contacted the family members of the present applicants about the whereabouts of his daughter, they abused and intimidated him. Thereafter the girl was recovered and the matter was investigated and chargesheet was submitted.

The present applicants feeling aggrieved by the chargesheet and cognizance order preferred the petition u/s 482 Cr.P.C. before this court for quashing the complaint as well as the cognizance order. The main accused Naveen Kashyap was tried by the learned Sessions Judge and he was ultimately acquitted by the court below. Copy of the judgment has been filed by the applicants. The judgment of the trial court reveals that the prosecutrix was examined before the court below and she did not support the prosecution version. She has stated that she went to her relation with her own accord. She had further stated that she had not been enticed away and taken away by any of the person or the accused. She further stated that she is aged about 21 years at the time of the incident and no sexual intercourse was committed without her consent. She has denied the entire statement so recorded during the investigation. The complainant was also declared hostile and he had also not supported the prosecution version. Both the witnesses declared hostile and as such the accused was acquitted. The trial of the co-accused could not be held due to stay operating by the order of the court. It was further contended on behalf of the applicants that looking into the entire facts and circumstances of the case, it is absolutely clear that there is no prospects of his case ending in conviction against the

present applicants and if the trial is allowed to be continue it will amount to wastage of valuable time of the court and will only be a formalities and the entire exercise of the court will be futile. It was further contended that if two persons are prosecuted separately under the same charge for the offences under the same transaction and on the basis of the same evidence, and if, one of them is acquitted for whatever reasons, then the conviction against the other accused would create an anomalous position in law and is likely to shake the confidence of the people in the administration of the justice. The learned counsel for the applicants further pointed out that on the principle of stare decisis the present petition is liable to be allowed.

Perusal of the record reveals that the prosecutrix had clearly stated in her statement that she had been enticed away and she went to her relation with her own accord and her father had not supported the version of the prosecution and both the witnesses had been declared hostile. Even if the present Sessions Trial is continued to be held, both the witnesses will appear before the court below and the prosecution will meet at the same fate which has been held in the former case.

Coming to the entire facts and circumstances of the case, there is no prospect of being convicted of these applicants and it would be wastage of time of the court and also abuse of the process of the court. Even if the petition is dismissed the parties will appear before the court below and the trial court will record the same evidence and thereafter the accused will be acquitted. It is revealed from the perusal of the record that the proceedings which has arisen before this court are for the same offence and for the same transaction. The evidence is also the same and I am of the view that on the principle of state decisis the proceedings are liable to be quashed. This court has also taken the same view in **Criminal Misc. Application No. 78 of 2001 in Jasbir Singh @ Yashbir Singh Verma and**

another Vs. State of Uttaranchal. Learned counsel for the applicants also relied upon the decision of **Allahabad High Court reported in 2006(1) J.Cr.C. 58, Prem Kumar and another Vs. State of U.P. & another and 2006(1) J.Cr.C. 142, Vijay Sahagal Vs. State of U.P. and another.**

In view of the foregoing discussion, the chargesheet and summoning order dated 07.05.2005 and entire proceedings in Case Crime No. 104 of 2004 (Criminal Case No. 784 of 2005) u/s 366, 368 and 376 I.P.C., against the applicants are hereby set aside and the petition is liable to be allowed. The petition is accordingly allowed.

(J.C.S. Rawat, J.)

25th April 2006

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